

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

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In re: JOSE J. HERNANDEZ

Debtor

BAP No. SC-13-1301-PaJuKu

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COLLECT ACCESS, LLC

Bankr. No. 11-15921-MM7  
Chapter 7

Appellant

v.

JOSE J. HERNANDEZ

April 30, 2014

Appellee

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**PROOF OF SERVICE OF MANDATE**

A certified copy of the attached judgment was sent to:

CLERK

U.S. BANKRUPTCY COURT  
BkCt, San Diego  
U.S. Bankruptcy Court  
Jacob Weinberger United States Courthouse  
325 West F Street  
San Diego, CA 92101-6998

on April 30, 2014  
By: Vicky Jackson-Walker, Deputy Clerk

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Appellant

**FILED**

v.

APR 04 2014

JOSE J. HERNANDEZ

Appellee

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

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**JUDGMENT**

ON APPEAL from the United States Bankruptcy Court for California Southern - San Diego.

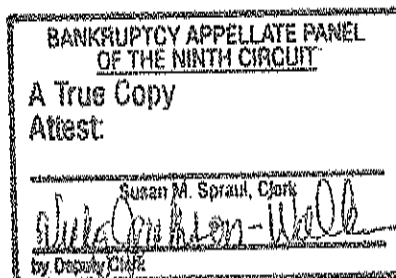
THIS CAUSE came on to be heard on the record from the above court.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Panel that the judgment of the Bankruptcy Court is **AFFIRMED**.

**FOR THE PANEL,**

Susan M Spraul  
Clerk of Court

By: Vicky Jackson-Walker, Deputy Clerk



**FILED**

**NOT FOR PUBLICATION**

APR 04 2014

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re: ) BAP No. SC-13-1301-PaJuKu  
JOSE J. HERNANDEZ, ) Bankr. No. 11-15921-MM7  
Debtor. )  
\_\_\_\_\_)  
COLLECT ACCESS, LLC, )  
Appellant, )  
v. ) **M E M O R A N D U M**<sup>1</sup>  
JOSE HERNANDEZ, )  
Appellee.<sup>2</sup> )  
\_\_\_\_\_)

Argued and Submitted on March 20, 2014  
at Pasadena, California

Filed - April 4, 2014

Appeal from the United States Bankruptcy Court  
for the Southern District of California

Honorable Margaret M. Mann, Bankruptcy Judge, Presiding

Appearances: Tappan Zee argued for appellant Collect Access,  
LLC.

Before: PAPPAS, JURY, and KURTZ, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> Appellee Jose Hernandez did not file a brief or appear in this appeal.

1 Appellant Collect Access, LLC ("Collect") appeals the order  
2 of the bankruptcy court finding it in contempt for failing to pay  
3 monies due to chapter 7<sup>3</sup> debtor, Appellee Jose J. Hernandez  
4 ("Hernandez"), under the terms of a previous order. We AFFIRM.

5 **FACTS<sup>4</sup>**

6 On August 30, 2002, a judgment was entered in San Diego  
7 Superior Court in favor of First Select, Inc. against Hernandez  
8 for \$2,091.71; the judgment was renewed on January 22, 2008 for  
9 \$3,723.19. Collect, the successor to First Select, submitted a  
10 writ of execution to the Los Angeles Sheriff's Department on  
11 July 12, 2011, to enforce the judgment. On August 26, 2011, the  
12 sheriff served the writ on Wells Fargo Bank, N.A. and received  
13 \$712.39 from funds in Hernandez's bank account.

14 On September 27, 2011, Hernandez filed a petition for relief  
15 under chapter 7. He listed the levied funds as an asset in  
16 Schedule B and claimed them exempt in Schedule C.

17 On November 3, 2011, Hernandez filed an ex parte motion in  
18 the bankruptcy court seeking an order requiring the sheriff to  
19 turn over the funds to him under § 542(a). The bankruptcy court  
20 granted the turnover motion the next day. However, the sheriff

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21  
22 <sup>3</sup> Unless otherwise indicated, all chapter and section  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532,  
24 all Rule references are to the Federal Rules of Bankruptcy  
25 Procedure, Rules 1001-9037, and all Civil Rule references are to  
the Federal Rules of Civil Procedure 1-86.

26 <sup>4</sup> As is discussed below, this is the second occasion these  
27 parties have appeared before the Panel concerning their disputes.  
28 Many of the facts recounted here are taken from the opinion of  
the Panel in the first appeal, Collect Access, LLC v. Hernandez,  
483 B.R. 713 (9th Cir. BAP 2012).

1 was unable to comply with the order because, before receiving it,  
2 the funds had been transferred to Zee Law Group ("Zee Group"),  
3 the attorneys for Collect.

4 Hernandez filed a second ex parte motion for turnover on  
5 November 21, 2011, this time directed at Zee Group. The  
6 bankruptcy court granted that motion and entered the second  
7 turnover order on November 30, 2011.

8 In response, on December 7, 2011, Collect filed an  
9 application to vacate the second turnover order, arguing that  
10 there was no legal basis to require it to turn over the funds to  
11 Hernandez. Hernandez responded on December 19, 2011, alleging  
12 that turnover was proper and, that by not paying over the funds  
13 to him, Collect had violated the § 362(a) automatic stay; he  
14 sought to recover \$1,100 on account of Collect's conduct as  
15 damages under § 362(k).

16 After conducting a hearing on Collect's motion on  
17 January 19, 2012, the bankruptcy court entered a Memorandum of  
18 Decision on March 19, 2012. The court explained its reasons for  
19 having granted both turnover motions and concluded that, by not  
20 paying the seized funds to Hernandez, Collect had violated the  
21 § 362(a) automatic stay:

22 Upon receiving notice of the Debtor's September 27,  
23 2011 bankruptcy petition, Collect had an affirmative  
24 obligation to cease its collection procedures and  
25 notify the Sheriff to return the property. It failed  
26 to do so, resulting in the Sheriff's release of the  
27 Funds to Collect on November 7, 2011. This release  
28 violated the automatic stay and was void (citations  
omitted). Collect and its attorney, Tappan Zee, were  
given notice of Debtor's Chapter 7 petition on the date  
of filing, September 27, 2011. Bankruptcy Code section  
362(k) permits a person injured by any willful  
violation to recover actual and punitive damages, as  
sanctions for willful violations. . . . In the

Debtor's response to Collect's opposition, the Debtor asserted \$1,100 in damages from Collect's violation of the automatic stay. Upon an application for fees and costs by the Debtor, subject to response from Collect, the Court will consider an order assessing Debtor's actual damages for Collect's violation of the automatic stay.

In re Hernandez, 468 B.R. 396, 405-06 (Bankr. S.D. Cal. 2012), aff'd, 483 B.R. 713 (9th Cir. BAP 2012).<sup>5</sup>

The bankruptcy court entered an order denying Collect's motion on April 2, 2012 ("Order Denying Vacatur"), which again directed Collect to turn over the \$712.39 to Hernandez no later than seven business days after entry of the order and provided that the court would "consider an order assessing Debtor's actual damages for Collect's violation of the automatic stay upon an Application for Fees and Costs by [Hernandez]."

On April 4, 2012, Hernandez filed a Motion for Costs, Damages and Fees Incurred for Willful Violation of the Automatic Stay (the "Damages Motion"). The Damages Motion sought attorneys fees and costs of \$3,572.06, actual damages of \$100.00, and punitive damages of \$7,225.00 relating to Collect's stay violation.

Collect appealed the Order Denying Vacatur on April 9, 2012. However, Collect did not seek a stay pending appeal from either the bankruptcy court or the Panel. In addition, in its Statement of Issues on Appeal filed in the bankruptcy court, Collect did not challenge the bankruptcy court's ruling that it had violated the automatic stay.

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<sup>5</sup> For clarity, we will refer to the BAP decision as Hernandez II.

1 On April 27, 2012, Collect finally turned over the \$712.39  
2 to counsel for Hernandez.

3 While the appeal in Hernandez II was pending, Hernandez  
4 filed two other motions in the bankruptcy court, one to avoid  
5 Collect's judgment lien under § 522(f) (the "Avoidance Motion"),  
6 and a second asking the bankruptcy court to find that Collect was  
7 in contempt for its failure to timely turn over the \$712.39  
8 within the seven-day time period specified in the Order Denying  
9 Vacatur (the "First Contempt Motion").

10 The bankruptcy court conducted a hearing on the three  
11 Hernandez motions (i.e., Damages, Avoidance and First Contempt)  
12 on June 14, 2012. At the hearing, the Avoidance Motion was  
13 granted, the First Contempt Motion was denied because Collect had  
14 by then complied with the Order Denying Vacatur, and the Damages  
15 Motion was granted. The court awarded Hernandez his requested  
16 attorney's fees of \$3,572.06, but denied his request for any  
17 additional damages.

18 The bankruptcy court directed Hernandez to prepare and lodge  
19 a proposed order concerning the Damages Motion. Hernandez lodged  
20 a proposed order on June 25, 2012. On July 2, 2012, Collect  
21 objected to the order proposed by Hernandez asserting that the  
22 bankruptcy court, at the hearing on June 14, 2012, had directed  
23 Hernandez to submit a form of "judgment," not an order. It also  
24 lodged a proposed form of judgment for entry by the court.

25 On July 6, 2012, the bankruptcy court entered an Order Re  
26 Further Briefing. It acknowledged Collect's objection to the  
27 Hernandez proposed order and conceded that it may have "misspoke"  
28 at some point in the hearing. However, the court indicated that

1 its intent, as reflected in the Memorandum of Decision and its  
2 tentative ruling, was that an order, not a judgment, be submitted  
3 for entry. The court cited to case law in support of its  
4 position that an order rather than a "mere judgment" was proper  
5 in this context.<sup>6</sup> However, the court invited Collect to submit  
6 further arguments on this point: "If Collect has case law to  
7 support its argument that the damages from the automatic stay  
8 should merely be a judgment instead of an order, it may submit  
9 further briefing by July 13, 2012. Otherwise, the Court will  
10 enter an order for Collect to pay Debtor's attorney's fees within  
11 15 days."

12 Collect did not respond to the bankruptcy court's invitation  
13 to submit a brief, and the bankruptcy court entered the order on  
14 the Damages Motion on July 19, 2012 (the "Attorney Fee Order").

15 On December 14, 2012, the BAP affirmed the Order Denying  
16 Vacatur. Hernandez II, 483 B.R. at 726. Collect did not appeal  
17 the BAP's decision.

18 On April 22, 2013, Hernandez filed a second motion for  
19 contempt against both Collect and Zee Group (the "Second Contempt  
20 Motion"). It alleged that, while the Attorney Fee Order had been  
21 entered on July 19, 2012, directing Collect to pay \$3,572.06 to  
22

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23 <sup>6</sup> See In re Jones, 2007 Bankr. LEXIS 4649, at \*1 (noting  
24 that an order to show cause was entered against creditor for  
25 failure to pay sanction as required by order); In re Seaspire,  
26 Inc., 63 B.R. 44, 45 (Bankr. M.D. Fla. 1986) (ordering creditor  
27 to appear to explain why she should not be held in contempt for  
28 failing to pay damages for violation of the automatic stay); see  
also Shuffler v. Heritage Bank, 720 F.2d 1141, 1148 (9th Cir.  
1983) (explaining that sanctions can be compensatory or  
coercive).



1 Hernandez's attorney within fifteen days, and while Hernandez had  
2 again demanded payment from Collect within five days on  
3 January 2, 2013, no payment had been made. The Second Contempt  
4 Motion asked the bankruptcy court to enter an Order to Show Cause  
5 ("O.C.") why Collect should not be held in civil contempt  
6 pursuant to Rule 9020 and § 105(a).

7 Collect responded to the Second Contempt Motion on May 6,  
8 2013. While not denying its failure to pay Hernandez, it argued  
9 that because only Collect, and not its attorneys, was named in  
10 the Attorney Fee Order, Zee Group could not be held in contempt;  
11 that contempt was an improper procedure for enforcement of the  
12 Attorney Fee Order; and that the Second Contempt Motion was moot  
13 because it sought the same relief as the First Contempt Motion,  
14 which had been denied. Collect did not comply with the Attorney  
15 Fee Order.

16 Before the hearing on the Second Contempt Motion on May 23,  
17 2013, the bankruptcy court issued a tentative ruling indicating  
18 its intent to hold Collect in civil contempt if the Attorney Fee  
19 Order had not been complied with, and the funds paid to  
20 Hernandez, before the hearing. After the hearing, the court took  
21 the issues under advisement.

22 The bankruptcy court entered an Order re Second Motion for  
23 Contempt on June 12, 2013 (the "Contempt Order"). First, the  
24 court agreed that contempt was not available as against Collect's  
25 attorneys. Second, the court ruled that the Second Contempt  
26 Motion was not moot because it addressed Collect's failure to  
27 comply with the Attorney Fee Order, while the First Contempt  
28 Motion focused on Collect's failure to obey the turnover orders.

1 The bankruptcy court then discussed Collect's third  
2 argument, that the Attorney Fee Order was merely a judgment for  
3 damages, rather than an order to pay sanctions, such that it  
4 could not be enforced via contempt. The court reasoned that,  
5 even if it had been an error for the court to enter an order,  
6 instead of a judgment, the Attorney Fee Order should have been  
7 obeyed. The court noted that the context of the proceedings  
8 clearly established that the Attorney Fee Order was based on an  
9 implicit finding of contempt, rather than merely a damages award.  
10 And finally, citing to the BAP's decision in Rosales v. Wallace  
11 (In re Wallace), 490 B.R. 898 (9th Cir. BAP 2013), the court  
12 explained that an order to enforce compliance with a previous  
13 sanctions order resulting from a party's misconduct is not an  
14 "ordinary money judgment" enforceable only through Civil Rule 69.  
15 The bankruptcy court found that clear and convincing evidence  
16 showed that Collect had knowingly violated a definite and  
17 specific court order (the Attorney Fee Order), had ignored the  
18 Court's rejection of its judgment theory, and had refused to pay  
19 the Attorney Fee Order.

20 The bankruptcy court ordered Collect to show cause why it  
21 should not pay \$3,572.06, the amount due on the Attorney Fee  
22 Order, to Hernandez within seven days. Collect was also ordered  
23 to pay the attorney's fees incurred by Hernandez in seeking  
24 compliance with the Attorney Fee Order, in an amount to be  
25 determined after Hernandez filed a fee application.

26 Collect filed a timely appeal of the Contempt Order on  
27 June 21, 2013. Hernandez sought from the bankruptcy court, and  
28 was granted, a stay pending appeal, on condition that it provide

1 a bond, which it did.

## 2 JURISDICTION

3 The bankruptcy court had jurisdiction under 28 U.S.C.  
4 §§ 1334 and 157(b) (2) (A) and (O). We have jurisdiction under  
5 28 U.S.C. § 158.

## 6 ISSUE

7 Whether the bankruptcy court abused its discretion in  
8 finding Collect in contempt for violating the Attorney Fee Order.

## 9 STANDARD OF REVIEW

10 The bankruptcy court's civil contempt order and sanctions  
11 are reviewed for abuse of discretion. Rediger Inves. Servs. v.  
12 H Granados Commc'ns, Inc. (In re H Granados Commc'ns), 503 B.R.  
13 726, 731-32 (9th Cir. BAP 2013). The abuse of discretion  
14 standard has two parts. First, we consider whether the  
15 bankruptcy court applied the correct legal standard; and second,  
16 we must decide whether the court's factual findings supporting  
17 the legal analysis were clearly erroneous. Alakozai v. Citizens  
18 Equity First Credit Union (In re Alakozai), 499 B.R. 698 (9th  
19 Cir. BAP 2013) (citing United States v. Hinkson, 585 F.3d 1247,  
20 1261-62 (9th Cir. 2009) (en banc)).

## 21 DISCUSSION

### 22 A.

23 To hold a party in civil contempt, the bankruptcy court must  
24 find by clear and convincing evidence that the offending party  
25 knowingly violated a definite and specific court order. Knupfer  
26 v. Lindblad (In re Dyer), 322 F.3d 1178, 1190 (9th Cir. 2003).  
27 The burden then shifts to the offending party to show why it was  
28 unable to comply with the order. FTC v. Affordable Media,

179 F.3d 1228, 1239 (9th Cir. 1999).

In the Contempt Order, the bankruptcy court explained:

Even if the court was incorrect in entering an order rather than a judgment for damages, which it was not, this is no defense to Collect's noncompliance with the Attorney Fee Order. If Collect thought the Attorney Fee Order was in error, it was incumbent upon it to submit briefing before the Court ruled, or appeal the Attorney Fee Order and seek to stay the order pending appeal. (Citations omitted). . . . In short, the evidence is clear and convincing that Collect knowingly violated a definite and specific court order by ignoring the Court's clear rejection of his judgment theory and refusing to pay the attorney's fees ordered by the Attorney Fee Order.

Contempt Order at 2.

In its analysis, the bankruptcy court correctly invokes a long-standing rule of law: "If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." This principle was articulated by the U.S. Supreme Court in Maness v. Meyers, 419 U.S. 449, 458 (1975), although its origin relates back in the Court's case law to at least 1922 with Howat v. Kansas, 258 U.S. 181 (1922). The Ninth Circuit frequently applies the rule. See, e.g., Espinosa v. United Student Aid Funds, 553 F.3d 1193, 1205 (9th Cir. 2008) (holding that a creditor is not free to violate a bankruptcy court order because it has doubts as to the validity of the order) aff'd, 559 U.S. 260, 279 (2010); United States v. Galin, 222 F.3d 1123, 1127 (9th Cir. 2000); Crystal Palace v. Mark Twain Indus., Inc. (In re Crystal Palace Gambling Hall, Inc.), 817 F.2d 1361, 1365 (9th Cir. 1987) (cited as authority by the bankruptcy court in this appeal).

The Maness rule applies even when the statute or case law

1 underlying the trial court's order is later ruled  
2 unconstitutional. United States v. Pescatore, 637 F.3d 128, 144  
3 (2d Cir. 2011). And disregard of the requirements of the rule is  
4 punishable by contempt proceedings. Id. However, to find  
5 contempt for violation of a court's order, the subject court  
6 order must have been lawful. Shilitani v. United States,  
7 384 U.S. 364, 370 (1966). But, in this context, "lawfulness" is  
8 not a high standard, depending only on whether the court entering  
9 the order had subject matter jurisdiction over the action and  
10 personal jurisdiction over the parties affected by the order.  
11 Maness, 419 U.S. at 459 ("an order issued by a court with  
12 jurisdiction over the subject matter and person must be obeyed by  
13 the parties until it is reversed by orderly and proper  
14 proceedings.").

15 **B.**

16 As the bankruptcy court found, Collect apparently decided  
17 that because the Attorney Fee Order was a "judgment," and not an  
18 order, it need not voluntarily obey it but, instead, the onus was  
19 on Hernandez to use execution or some other enforcement means to  
20 collect the sums due under the Attorney Fee Order. Collect's  
21 decision was incorrect and had consequences.

22 First, we note that Collect has never asserted that the  
23 bankruptcy court lacked subject matter jurisdiction over this  
24 dispute, or personal jurisdiction over Collect to enter the  
25 Attorney Fee Order. Indeed, the Attorney Fee Order was entered  
26 by the bankruptcy court in connection with a pending bankruptcy  
27 case, to enforce the § 362(a) automatic stay, and to compel a  
28 creditor to recompense Hernandez for damages Collect caused him

1 by its disregard of that stay. Clearly, the bankruptcy court had  
2 subject matter jurisdiction over the contempt proceedings.  
3 See 28 U.S.C. § 1334(b) (establishing jurisdiction in the district  
4 courts for "civil proceedings . . . arising in or related to a  
5 case under title 11."); 28 U.S.C. § 157(a) (authorizing district  
6 courts to refer all such proceedings to the bankruptcy court);  
7 28 U.S.C. § 157(b) (1), (2) (A), (E), and (O) (authorizing  
8 bankruptcy court to enter a final judgment in core proceedings,  
9 including "matters concerning administration of the estate,"  
10 "orders to turn over property of the estate," or in "proceedings  
11 affecting . . . the adjustment of the debtor-creditor . . .  
12 relationship"). Collect was also subject to the personal  
13 jurisdiction of the bankruptcy court, was afforded appropriate  
14 due process, and appeared and was heard before the bankruptcy  
15 court entered its orders. See Rules 9014 (contested matters);  
16 9020 (contempt).

17 Moreover, as we explain below, Collect's various arguments  
18 challenging the contempt finding in the bankruptcy court, and now  
19 on appeal, all lack merit. But, again, even if Collect were  
20 correct, it can not dispute that the bankruptcy court issued a  
21 lawful order, the Attorney Fee Order, which required it to act  
22 and it defiantly chose not to. If Collect believed that order  
23 was improper in some respect, its sole option was to appeal the  
24 order, and to seek a stay of its duty to perform pending that  
25 appeal. Instead, as the bankruptcy court correctly observed,  
26 Collect consciously decided not to comply with the Attorney Fee  
27 Order, it did not appeal, and it did not seek a stay.  
28 Effectively, Collect did nothing, and doing nothing when the

1 Attorney Fee Order clearly and definitely compelled it to pay  
2 Hernandez for the attorneys fees and costs he incurred in  
3 prosecuting the stay violation motions amply demonstrates  
4 Collect's contempt.

5 **C.**

6 Collect's arguments in support of its legal position fall  
7 into two categories. It first contends that the bankruptcy  
8 court's Attorney Fee Order is a "money judgment," and therefore,  
9 it must be enforced as a judgment, not via contempt proceedings.  
10 Second, Collect insists that the bankruptcy court erred in  
11 finding Collect in contempt for failing to pay a compensatory  
12 order.

13 Collect's first argument in unpersuasive. It relies on  
14 Rules 9001(7) ("`Judgment' means any appealable order."), 9002(5)  
15 ("`Judgment' includes any order appealable to an appellate  
16 court."), and Civil Rule 69(a), which is applicable in contested  
17 matters via Rules 7069 and 9014(c) ("A money judgment is enforced  
18 by a writ of execution, unless the court orders otherwise.").  
19 But Collect's argument proves too much, because, at bottom, its  
20 "judgment theory" would treat all orders issued by a bankruptcy  
21 court as judgments.

22 Collect cites two cases for the proposition that all of the  
23 bankruptcy court's orders are, by virtue of these rules,  
24 equivalent to money judgments. Collect's Br. at 12 (citing  
25 Newland v. Super. Ct., 40 Cal. App. 4th 608, 615 (1995); SEC v.  
26 Naftalin, 460 F.2d 471, 775 (8th Cir. 1972)). Neither case  
27 applies in this context.

28 The Newland case deals with discovery sanctions under

1 California law. In it, the California court states that  
2 "monetary sanction orders are enforceable through the execution  
3 of judgment laws. These orders have the force and effect of a  
4 money judgment and are immediately enforceable through execution,  
5 except to the extent the trial court may order a stay of the  
6 sanction." Newland, 40 Cal. App. 4th at 615. Of course, Newland  
7 deals specifically with California's procedural rules; it does  
8 not speak to whether, or which, orders entered in federal civil  
9 proceedings are money judgments that must be enforced via a writ  
10 of execution, as opposed to contempt proceedings.

11 Collect's second authority, Naftalin, is also of no  
12 consequence here. Quoting the court in its brief, Collect points  
13 out that, once the finding of contempt has been made and a  
14 sanction imposed, the order acquires all the "elements of  
15 cooperativeness and consequence necessary to be possessed by any  
16 judicial order to enable it to have the status of a final  
17 decision under [28 U.S.C.] § 1291." Naftalin at 475. But  
18 Collect does not correctly quote the text of the Eighth Circuit's  
19 decision, which instead actually reads, "Until a sentence or  
20 sanction has been made to exist as to a contempt adjudication,  
21 the situation is lacking in the elements of operativeness and  
22 consequence necessary to be possessed by any judicial order to  
23 enable it to have the status of a final decision under § 1291."  
24 Id. Naftalin also does not seem to have any bearing on what  
25 constitutes a money judgment enforceable by execution.

26 Collect searches unsuccessfully for reliable authority that  
27 a final order awarding monetary sanctions is a money judgment for  
28 purposes of Civil Rule 69(a). Collect cites four cases that



1 simply apply Civil Rule 69(a)'s requirement that the proper means  
2 of securing compliance with a money judgment is to seek a writ of  
3 execution. Collect's Op. Br. at 20. The cases do not attempt to  
4 distinguish between money judgments and a stay violation  
5 sanctions order, nor more generally, are they insightful as to  
6 whether final orders must be enforced solely through writs of  
7 execution.

8 Of the four cases, the first is Hilao v. Est. of Marcos,  
9 95 F.3d 848 (9th Cir. 1996). This case involved an attempt to  
10 enforce a \$2 billion judgment from the District Court of Hawaii  
11 in the Central District of California against the estate of  
12 former President Ferdinand Marcos of the Philippines. The court  
13 held that the size of the judgment and difficulty of enforcing  
14 the judgment merited its treatment as a money judgment under  
15 Civil Rule 69(a). Id. at 855.

16 The second case is Shuffler v. Heritage Bank, 720 F.2d 1141  
17 (9th Cir. 1983). The case dealt with enforcement of a money  
18 judgment, plus \$500 per day in fines. Although there is dicta in  
19 the decision about Civil Rule 69(a), the court did not base its  
20 decision on Civil Rule 69(a), but only ruled that the party was  
21 in contempt for noncompliance with the earlier judgment, and  
22 remanded to the district court for determination of the amount of  
23 fine. Id. at 1148-49.

24 The third case is Aetna Cas. & Sur. Co. v. Markarian,  
25 144 F.3d 346, 349 (1st Cir. 1997). The case holds that where a  
26 "money judgment" is entered in federal court, the enforcement is  
27 by writ of execution. Again, the size and complexity of the  
28 judgment and difficulty of enforcement made the writ of execution

1 under Civil Rule 69(a) the proper means of enforcement. Id. at  
2 349.

3 The fourth case is Combs v. Ryan's Coal Co., 785 F.2d 970,  
4 980 (11th Cir. 1986). Here the issue was enforcement of a money  
5 judgment against nonparties. The amount was substantial  
6 (\$750,000), and again, the court determined it was a money  
7 judgment enforceable under Civil Rule 69(a), in part because it  
8 was a large judgment and involved nonparties.

9 These cases can be contrasted with this appeal. Here, the  
10 bankruptcy court found in the Attorney Fee Order that Collect had  
11 willfully violated the automatic stay by declining to release the  
12 seized funds to Hernandez, and awarded Hernandez compensatory  
13 sanctions under § 362(k). Collect did not appeal that order.  
14 And although Collect argues that the Attorney Fee Order was not a  
15 sanction order for misconduct, this is quibbling. The Attorney  
16 Fee Order directed Collect to pay the damages it had caused  
17 Hernandez to incur, consisting of attorneys fees and costs, in  
18 response to Collect's violation of the § 362(a) automatic stay.  
19 Simply put, Collect's conduct was inappropriate when measured  
20 against the Code, and the Attorney Fee Order cannot fairly be  
21 characterized as anything other than a sanction. The cases cited  
22 by Collect all deal with judgments entered in business disputes,  
23 not sanctions for misconduct.

24 As compared to the dearth of support for Collect's position,  
25 BAP case law supports the bankruptcy court's view that when a  
26 party's willful failure to comply with an order constitutes  
27 misconduct it may be remedied via contempt sanctions.

28 In Rosales v. Wallace (In re Wallace), 490 B.R. 898 (9th

1 Cir. BAP 2013), in a first contempt order, a creditor was found  
2 by the bankruptcy court to have violated the § 524(a) discharge  
3 injunction. The court ordered the creditor to pay sanctions to  
4 the debtor, including attorney's fees, within sixty days. The  
5 creditor did not pay. The debtor filed a second contempt motion  
6 to compel payment. The creditor argued that the first contempt  
7 order was a money judgment that could only be enforced by a writ  
8 of execution under Civil Rule 69(a). After a hearing, the  
9 bankruptcy court found creditor in contempt and order them to pay  
10 the original sanctions order. Creditor then appealed to the BAP.  
11 Id. at 904.

12 The Panel first dismissed creditor's argument that an order  
13 to pay sanctions is a "judgment" for purposes of Civil  
14 Rule 69(a), and Rules 9001(7) and 9002(5): "[T]hese Rules merely  
15 provide definitions for the word 'Judgment' as 'any appealable  
16 order' and 'any order appealable to an appellate court.' We fail  
17 to see how these definitions would transform what is clearly an  
18 order to pay monetary sanctions within a specified time period  
19 into a money judgment." Id. at 906.

20 The Panel ultimately ruled that Civil Rule 69(a) did not  
21 apply to a bankruptcy court's monetary sanction for violation of  
22 a previous order:

23 Despite Civil Rule 69's mandate for the proper  
24 enforcement of money judgments, we are persuaded . . .  
25 that a court's monetary sanction for a contemnor's  
26 misconduct is not an "ordinary" money judgment, and  
27 therefore the use of the contempt power is a proper  
28 method to enforce a sanction for misconduct.  
[Cleveland Hair Clinic, Inc. v. Puig], 106 F.3d 165,  
166 (7th Cir. 1997) ("Use of the contempt power is an  
appropriate way to enforce a sanction for misconduct,  
which is not an ordinary money judgment.") (citing  
Alpern v. Lieb, 11 F.3d 689, 690 (7th Cir. 1993)). See

1 Loftus v. Se. Pa. Transp. Auth., 8 F.Supp.2d 464, 468  
2 (E.D. Pa. 1998), aff'd, 187 F.3d 626 (3d Cir. 1999)  
3 (table case) (citing Cleveland Hair Clinic and holding  
4 that the use of the contempt power to enforce a  
5 sanction for misconduct is appropriate because a  
6 sanction for misconduct is not an ordinary money  
7 judgment); Eng. v. Goodcents Holdings, Inc., 2009 U.S.  
8 Dist. LEXIS 77801, 2009 WL 2835201, at \*2 (N.D. Ga.  
9 Aug. 31, 2009) (rejecting plaintiff's argument that a  
10 writ of execution was exclusive remedy for violating  
11 prior sanctions order and holding that contempt  
12 proceeding was proper remedy for plaintiff's failure to  
13 comply with the order awarding defendant attorney's  
14 fees for plaintiff's unreasonable continuation of  
15 litigation); SD Prot., Inc. v. Del Rio, 587 F.Supp.2d  
16 429, 434-36 (E.D.N.Y. 2008) (holding party in contempt  
17 for failing to comply with prior order to pay monetary  
18 sanction imposed for delaying litigation).

19 Id. at 907.

20 Collect's argument that the Attorney Fee Order is a money  
21 judgment that must be enforced through a writ of execution under  
22 Civil Rule 69(a) is inconsistent with In re Wallace. We hold  
23 that the Attorney Fee Order was a definite and specific order  
24 that Collect knowingly elected to disregard. Accordingly, the  
25 bankruptcy court did not abuse its discretion in finding Collect  
26 in contempt. Id. at 908.

27 **D.**

28 There is one potential element of confusion in the  
bankruptcy court's Contempt Order that Collect identifies: Were  
the amounts that Collect was ordered to pay Hernandez in the  
Attorney Fee Order compensatory damages under § 362(k), or  
contempt damages under § 105(a)? Earlier in the case, the  
bankruptcy court based the Attorney Fee Order on § 362(k).  
Then, in the Contempt Order, the bankruptcy court stated that  
"the record also supports the Court finding Collect in contempt  
in the Attorney Fee Order under the standards of 11 U.S.C.

1 § 105(a)." Contempt Order at 5.

2 There does not appear to be any prohibition in the case law  
3 on awarding attorneys fees to an individual debtor to remedy a  
4 stay violation under either § 105(a) or §362(k), provided the  
5 different procedural requirements for such an award are met, and  
6 the award does not include punitive damages. Schwartz-Tallard v.  
7 Am. Servicing Co. (In re Schwartz-Tallard), 473 B.R. 340, 351  
8 (9th Cir. BAP 2012). And, recall, as the bankruptcy court  
9 observed in its Contempt Order, "[t]he [Order re Further  
10 Briefing] clearly invited the parties to address the contempt  
11 issue to enable the Court to determine which of the two proposed  
12 orders to enter, so Collect was aware that the Court was  
13 reconsidering its tentative ruling and awarding the [Attorney Fee  
14 Order] on the basis of the First Contempt Motion rather than the  
15 Damages Motion when it entered the Attorney Fee Order as a  
16 contempt order, rather than merely a damages award." Contempt  
17 Order at 6.

18 The Panel has addressed this issue, and in doing so,  
19 rejected Collect's argument that the Ninth Circuit's opinion in  
20 Sternberg v. Johnson, 595 F.3d 937 (9th Cir. 2008), limits  
21 damages for violation of the automatic stay to those specified in  
22 § 362(k):

23 Sternberg does not limit the recovery of fees and costs  
24 to § 362(k); instead, a debtor's recovery of damages is  
25 also available under § 105(a). This is confirmed in  
26 the decision itself, which provides that the basis for  
27 the decision was the statutory language of § 362(k),  
28 not the bankruptcy court's civil contempt authority  
under § 105(a). See [Sternberg, 595 F.3d at] 946 n.3  
("As this opinion does not consider the civil contempt  
authority of the court, it does not limit the  
availability of contempt sanctions, including attorney  
fees, for violation of the automatic stay, where

1 otherwise appropriate." ).  
2 Rediger Inves. Corp. v. H Granados Commc'ns, Inc. (In re  
3 H Granados Commc'ns, Inc.), 503 B.R. 726, 734 (9th Cir. BAP  
4 2013) .

5 At bottom, it is of no consequence in this case whether the  
6 Attorney Fee Order was based upon the bankruptcy court's inherent  
7 power to punish contempts under § 105(a), as opposed to its power  
8 to compensate debtors for stay violations under § 362(k). The  
9 Attorney Fee Order was a lawful order of the bankruptcy court  
10 that Collect defied for almost two years. We find no abuse of  
11 discretion in the bankruptcy court's decision to find Collect in  
12 contempt for its failure to obey the Attorney Fee Order.

### 13 CONCLUSION

14 Collect knowingly violated a lawful, specific order of the  
15 bankruptcy court directing it to pay compensatory damages to  
16 Hernandez incurred as a result of Collect's violation of the  
17 automatic stay. Instead of appealing the order and requesting a  
18 stay pending appeal, Collect did nothing. Its arguments to  
19 justify its conduct lack merit. Even were it correct, though,  
20 Collect cannot avoid the consequences of its disregard of the  
21 basic tenet that lawful orders of a court must be obeyed, and  
22 absent compliance, as the disobedient party, it may be held in  
23 contempt.

24 We AFFIRM the Contempt Order of the bankruptcy court.  
25  
26  
27  
28